

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN SENATE APRIL 23, 2003

SENATE BILL

No. 1064

Introduced by ~~Committee on Revenue and Taxation (Senators Cedillo (Chair), Alpert, Bowen, and Burton)~~ Senator Burton

February 27, 2003

~~An act to amend Sections 17941, 23701h, and 23701x of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Sections 6902.2, 19047, 19333, and 19345 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1064, as amended, ~~Committee on Revenue and Taxation~~ Burton. ~~Corporation taxes: exempt organizations—Income and corporation tax appeals: sales and use tax credit.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit until January 1, 2004, in an amount equal to 6% of the amount paid or incurred on or after January 1, 1994, for qualified property that is placed in service in this state. Under those provisions, qualified property includes tangible personal property purchased to be used primarily (1) in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, (2) in research and development, or (3) to maintain, repair, measure, or test that property. The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The Sales and Use Tax Law permits a person who has paid sales tax reimbursement to a retailer or use tax on

a purchase or purchases of property, in lieu of claiming the credit for qualified manufacturing property under the Personal Income Tax Law or the Corporation Tax Law, to file a claim for refund equal to the amount of the credit, as specified.

This bill would make a clarifying change to those sales and use tax refund provisions.

Existing laws require the State Board of Equalization to hear and determine income and corporation tax appeals, as provided.

This bill would require that any determination of the State Board of Equalization to modify the action of the Franchise Tax Board, except as specified, be approved by no less than 3 members of the State Board of Equalization, and that if less than 3 members of the State Board of Equalization vote to modify the action of the Franchise Tax Board, that action is sustained.

~~The Corporation Tax Law specifies the types of title-holding companies that are exempt from the taxes imposed by that law.~~

~~This bill would provide that for purposes of those exemptions, the term “corporation” includes limited liability companies, as specified.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17941 of the Revenue and Taxation~~
2 ~~Code~~
3 SECTION 1. Section 6902.2 of the Revenue and Taxation
4 Code is amended to read:
5 6902.2. (a) (1) In lieu of claiming the credit allowed by
6 Section 17053.49 or 23649, a person who has paid sales tax
7 reimbursement to a retailer or use tax on a purchase or purchases
8 of property for which a credit may be allowed pursuant to those
9 sections, may file a claim for refund equal to the credit amount that
10 would otherwise be allowed pursuant to those sections. Any claim
11 so filed shall be submitted to the board on a form prescribed by the
12 board, shall be filed no earlier than the date a claim could have been
13 made for a tax credit or carryover of a credit under Section
14 17053.49 or 23649, whichever is applicable, and shall be for an
15 amount not in excess of the amount of the credit that could have
16 been used to ~~offset personal income or bank or corporation tax~~

1 ~~liability~~ reduce the “net tax,” as defined in Section 17039, or the
 2 “tax,” as defined in Section 23036. Any credit carried over
 3 pursuant to Section 17053.49 or Section 23649 may not be
 4 refunded under this section until the credit carried over could be
 5 applied to reduce the “net tax” (as defined in Section 17039) or
 6 the “tax” (as defined in Section 23036), as applicable. A claim for
 7 refund shall, unless the sale or use of the property is otherwise
 8 exempt under this part, be accompanied by proof of payment of the
 9 tax to a retailer, including, but not limited to, a copy of an invoice
 10 or purchase contract that indicates the following:

- 11 (A) The date on which the purchase occurred.
- 12 (B) A description of the property purchased.
- 13 (C) The price paid for the property.
- 14 (D) The amount of tax paid with respect to the purchase.

15 (2) In the case of a person who has self-reported use tax to the
 16 board, the claim for refund shall also indicate the amount of use
 17 tax paid and the period for which that tax was remitted.

18 (3) Any person who claims a refund under this section shall
 19 make an irrevocable election to waive the equivalent amount of
 20 credit allowed under Section 17053.49 or 23649. Any refund
 21 claimed under this section shall be in lieu of claiming any credit
 22 under Section 17053.49 or 23649. Any person electing to file a
 23 claim for refund pursuant to this section shall provide a copy of the
 24 personal or ~~bank and~~ corporation tax return on which the tax
 25 liability was assessed for which the in-lieu refund is being claimed
 26 under this section.

27 (b) No interest shall be paid on any refund made pursuant to this
 28 section.

29 (c) Notwithstanding Section 6961, the board may recover any
 30 refund or part thereof that is erroneously made pursuant to this
 31 section. In recovering any erroneous refund made pursuant to this
 32 section, the board, in its discretion, may issue a deficiency
 33 determination in accordance with Article 2 (commencing with
 34 Section 6481) or Article 4 (commencing with Section 6536) of
 35 Chapter 5. Except in the case of fraud, that determination shall be
 36 made within three years from the last day of the month following
 37 the quarterly period in which the board approved the refund.

38 (d) The board shall provide an annual listing to the Franchise
 39 Tax Board, in a form and manner agreed upon by the board and the
 40 Franchise Tax Board, of the persons who during the year have

1 claimed a refund of sales or use tax under this section and the
2 amount of the refund issued to each person.

3 (e) Any refund approved by the board pursuant to this section
4 shall be payable from the General Fund.

5 *SEC. 2. Section 19047 of the Revenue and Taxation Code is*
6 *amended to read:*

7 19047. (a) The board shall hear and determine the appeal and
8 thereafter shall forthwith notify the taxpayer and the Franchise Tax
9 Board of its determination and the reasons therefor.

10 (b) *Any determination of the board to modify the action of the*
11 *Franchise Tax Board (other than modifications in accordance with*
12 *concessions made in writing by the Franchise Tax Board during*
13 *the appeal) shall be approved by no less than three members of the*
14 *board. If less than three members of the board vote to modify the*
15 *action of the Franchise Tax Board, that action (as modified in*
16 *accordance with concessions made in writing by the Franchise Tax*
17 *Board) is sustained.*

18 *SEC. 3. Section 19333 of the Revenue and Taxation Code is*
19 *amended to read:*

20 19333. (a) The board shall hear and determine the appeal and
21 thereafter shall forthwith notify the taxpayer and the Franchise Tax
22 Board of its determination and the reasons therefor.

23 (b) *Any determination of the board to modify the action of the*
24 *Franchise Tax Board (other than modifications in accordance with*
25 *concessions made in writing by the Franchise Tax Board during*
26 *the appeal) shall be approved by no less than three members of the*
27 *board. If less than three members of the board vote to modify the*
28 *action of the Franchise Tax Board, that action (as modified in*
29 *accordance with concessions made in writing by the Franchise Tax*
30 *Board) is sustained.*

31 *SEC. 4. Section 19345 of the Revenue and Taxation Code is*
32 *amended to read:*

33 19345. (a) The board shall hear and determine the same and
34 thereafter shall forthwith notify the taxpayer and the Franchise Tax
35 Board of its determination and the reasons therefor.

36 (b) *Any determination of the board to modify the action of the*
37 *Franchise Tax Board (other than modifications in accordance with*
38 *concessions made in writing by the Franchise Tax Board during*
39 *the appeal) shall be approved by no less than three members of the*
40 *board. If less than three members of the board vote to modify the*

1 *action of the Franchise Tax Board, that action on the disallowance*
2 *of interest (as modified in accordance with concessions made in*
3 *writing by the Franchise Tax Board) is sustained.*

4 *SEC. 5. The amendments made to Section 6902.2 of the*
5 *Revenue and Taxation Code by Section 1 of this act are declaratory*
6 *of existing law.*

7 ~~is amended to read:~~

8 ~~17941. (a) For each taxable year beginning on or after~~
9 ~~January 1, 1997, every limited liability company doing business~~
10 ~~in this state (as defined in Section 23101) shall pay annually to this~~
11 ~~state a tax for the privilege of doing business in this state in an~~
12 ~~amount equal to the applicable amount specified in paragraph (1)~~
13 ~~of subdivision (d) of Section 23153 for the taxable year.~~

14 ~~(b) (1) In addition to any limited liability company which is~~
15 ~~doing business in this state and is therefore subject to the tax~~
16 ~~imposed by subdivision (a), for each taxable year beginning on or~~
17 ~~after January 1, 1997, a limited liability company shall pay~~
18 ~~annually the tax prescribed in subdivision (a) if articles of~~
19 ~~organization have been accepted, or a certificate of registration has~~
20 ~~been issued, by the office of the Secretary of State. The tax shall~~
21 ~~be paid for each taxable year, or part thereof, until a certificate of~~
22 ~~cancellation of registration or of articles of organization is filed on~~
23 ~~behalf of the limited liability company with the office of the~~
24 ~~Secretary of State.~~

25 ~~(2) If a taxpayer files a return with the Franchise Tax Board that~~
26 ~~is designated as its final return, the Franchise Tax Board shall~~
27 ~~notify the taxpayer that the annual tax shall continue to be due~~
28 ~~annually until a certificate of cancellation is filed with the~~
29 ~~Secretary of State pursuant to Section 17356 or 17455 of the~~
30 ~~Corporations Code.~~

31 ~~(c) The tax assessed under this section shall be due and payable~~
32 ~~on or before the 15th day of the fourth month of the taxable year.~~

33 ~~(d) For purposes of this section, "limited liability company"~~
34 ~~means any organization, other than a limited liability company that~~
35 ~~is exempt from the tax and fees imposed under this chapter~~
36 ~~pursuant to Section 23701h or Section 23701x, that is formed by~~
37 ~~one or more persons under the law of this state, any other country,~~
38 ~~or any other state, as a "limited liability company" and that is not~~
39 ~~taxable as a corporation for California tax purposes.~~

1 ~~SEC. 2.—Section 23701h of the Revenue and Taxation Code is~~
2 ~~amended to read:~~

3 ~~23701h. (a) A corporation described in Section 501(c)(2) of~~
4 ~~the Internal Revenue Code, relating to certain title holding~~
5 ~~companies.~~

6 ~~(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of~~
7 ~~subdivision (b) of Section 23038, for purposes of applying Section~~
8 ~~501(c)(2) of the Internal Revenue Code under this section, the term~~
9 ~~“corporation” includes a limited liability company that is~~
10 ~~classified as a partnership or as a disregarded entity.~~

11 ~~(2) A limited liability company that, under the authority of this~~
12 ~~section, is exempt from the tax imposed by this part is also exempt~~
13 ~~from the tax and fees imposed under Chapter 10.6 (commencing~~
14 ~~with Section 17941) of Part 10.~~

15 ~~SEC. 3.—Section 23701x of the Revenue and Taxation Code is~~
16 ~~amended to read:~~

17 ~~23701x. (a) A corporation or trust described in Section~~
18 ~~501(c)(25) of the Internal Revenue Code, relating to certain~~
19 ~~title holding companies.~~

20 ~~(b) (1) Notwithstanding subparagraph (B) of paragraph (2) of~~
21 ~~subdivision (b) of Section 23038, for purposes of applying Section~~
22 ~~501(c)(25) of the Internal Revenue Code under this section, the~~
23 ~~term “corporation” includes a limited liability company that is~~
24 ~~classified as a partnership or as a disregarded entity.~~

25 ~~(2) A limited liability company that, under the authority of this~~
26 ~~section, is exempt from the tax imposed by this part is also exempt~~
27 ~~from the tax and fees imposed under Chapter 10.6 (commencing~~
28 ~~with Section 17941) of Part 10.~~

29 ~~SEC. 4.—This act provides for a tax levy within the meaning of~~
30 ~~Article IV of the Constitution and shall go into immediate effect.~~

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